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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,093	12/28/2001	Ronald J. Lebel	047711-0278	3989

7590

10/03/2003

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EXAMINER

NASSER, ROBERT L

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,093

Applicant(s)

LEBEL ET AL.

Examiner

Robert L. Nasser

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3736

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the unidiametric aspect of the invention, described in claim 2, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 13, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Nagai 6,411,834. Nagai '834 shows a device having a sensor module 1, a cable 4, and a connector 22. The cable has a core 5 and a first tubing 102, with a conductive element 101 wrapped around the core. Nagai further teaches the method of claim 21.

Claims 1, 3, 6, 13, and 21 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Levin et al.

Art Unit: 3736

Claims 1, 2, 13, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogel et al. Vogel shows a unidiametric device having a sensor module – to the right of sensor 22 on the cover figure, a cable, and a connector 50.

Claims 1, 3, 6, 10, 11, 13, and 21 rejected under 35 U.S.C. 102(e) as being anticipated by Schaenzer. Schaenzer shows a device including a sensor module 44, a cable running from the sensor 44 to connectors 30 and 36, where, as shown in figure 7, the cable has a core 176, a first tubing 170, wires coiled around tubing 170, and a second tubing 168. The device is radio-opaque.

Claims 1, 13-16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Takatani et al. Takatani et al shows an oximetric sensor, which inherently has a cable running to a connector to a monitor, where the sensor module include a spacer member 19 and the sensor module is encased by epoxy 101. The examiner notes that epoxy is comprised of beads, (see for example, Rich et al, 4,865,038).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai '834 in view of KenKnight et al. The tubing 5 on Nagai is made from nylon. KenKnight et al teaches that nylon and polyester are equivalent materials for body use in the body.

Art Unit: 3736

Hence, it would have been obvious to modify Nagai to substitute polyester for nylon, as it is merely the substitution of one known material for another.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levin et al in view of Yang et al. Yang et al is selected from a myriad references that teach using a ribbon cable when multiple conductors are arranged side by side. Therefore, it would have been obvious to modify Levin et al to use a ribbon cable, as it is merely the substitution of one known equivalent wiring arrangement for another.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin et al. With respect to claim 9, the examiner takes official notice that platinum is a known material for leads in a sensor. With respect to claims 7 and 8, the examiner notes that applicant has not stated that the method of attachment solves a stated problem or is for a particular purpose. In addition, applicant has not shown any unexpected results. Hence, it would have been obvious to weld the wires to the sensor and crimp them to the conductor, as it is merely a matter of design choice for one skilled in the art.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaenzer. With respect to claim 9, the examiner takes official notice that platinum is a known material for leads in a sensor. With respect to claims 7 and 8, the examiner notes that applicant has not stated that the method of attachment solves a stated problem or is for a particular purpose. In addition, applicant has not shown any unexpected results. Hence, it would have been obvious to weld the wires to the sensor and crimp them to the conductor, as it is merely a matter of design choice for one skilled in the art.

Art Unit: 3736

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai '834 in view of Nagai et al 6,143,150. Nagai '150 further shows a sensor structure for measuring the same parameters as the sensor of Nagai '834, with a second layer of tubing around a first layer, and a window in the second layer. Hence, it would have been obvious to modify Nagai '834 to use such a sensor, as it is merely the substitution of one known equivalent sensor for another.

Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai '834 in view of Ward et al. Nagai teaches that it is useable with electrochemical sensors. Ward et al shows a known electrochemical sensor having glucose oxidase and human serum albumin enzyme mixture, where the serum albumin is a protein matrix. Hence, it would have been obvious to modify the device of Nagai to use a sensor of Ward et al, as it is merely the substitution of one known equivalent sensor for another.

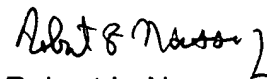
Claims 22 and 23 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, as none of the art teaches the method of making with the window in the outer tubing, the enzyme, the spacer, and the beads, as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

Art Unit: 3736

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
September 29, 2003

ROBERT L. NASSER
PRIMARY EXAMINER